STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 9, 2014
v MICHAEL LEE WILLIAMS, Defendant-Appellant.	No. 316429 Wayne Circuit Court LC No. 12-009018-FC

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v MICHAEL LEE WILLIAMS, Defendant-Appellant.	No. 316762 Wayne Circuit Court LC No. 13-000989-FC

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

In docket no. 316429, defendant appeals as of right his convictions of two counts of armed robbery, MCL 750.529, carrying a concealed weapon, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to 12 to 20 years for each armed robbery conviction, two to five years for carrying a concealed weapon, and two years for felony-firearm. Count 1, defendant's armed robbery conviction, runs consecutive to count 4, defendant's felony-firearm conviction.

In docket no. 316762, defendant appeals as of right his jury trial convictions of armed robbery, MCL 750.529, and felony-firearm, MCL 750.227b. Defendant was sentenced to consecutive sentences of 15 to 30 years for armed robbery and two years for felony-firearm.

These two appeals have been consolidated for our review. We affirm in both dockets.

I. FACTUAL BACKGROUND

On September 1, 2012, Joshua Johnson and several men—including defendant—drove around Detroit, Michigan, for the purpose of seeking out people to rob. Between 6:30 and 6:45 p.m., the men spotted Albert Andrews exiting a liquor store. When Andrews attempted to enter his car, defendant and another man pointed handguns at him. Andrews attempted to reach his own pistol inside the car, but he was overpowered by the group.

During the struggle, defendant took a gold chain that Andrews was wearing, and another male grabbed the pistol from inside the vehicle. The attackers ran away, but Andrews saw them enter a green jeep. In a photograph lineup conducted approximately a month later, Andrews identified defendant as one of the attackers. At trial, Johnson admitted to driving the jeep, and Jonathan Colvin testified that he and defendant participated in the robbery.

On September 8, 2012, defendant, Johnson, and Colvin met again for the purpose of committing a robbery. At approximately 8:30 p.m., Johnson drove defendant and Colvin to Dearborn, Michigan. He dropped them off in a residential area and they proceeded on foot. Salwa Bazzi, Mirvat Hammoud, and two other women were sitting on the front porch of Hammoud's house when they saw defendant and Colvin approaching. Defendant and Colvin went onto the porch, drew their handguns, and demanded that Bazzi hand over her cellular phone. Defendant grabbed Hammoud by the head and dragged her across the porch. Hammoud was loudly screaming throughout the encounter, and the neighbors started to come out of their homes. Then defendant and Colvin ran away after taking Bazzi's cell phone.

The police were able to track Bazzi's cellular phone to a liquor store in Detroit, where they apprehended defendant, Colvin, and Johnson. At the time of the arrest, the police found defendant in possession of a handgun and Bazzi's cell phone. After he was arrested, defendant confessed to the Dearborn robbery. Defendant was convicted of three counts of armed robbery, two counts of felony-firearm, and one count of carrying a concealed weapon. Defendant now appeals.

II. PROSECUTORIAL MISCONDUCT

A. STANDARD OF REVIEW

Defendant argues that the prosecution's statements during closing and rebuttal argument constituted misconduct that denied him a fair trial. Because defendant failed to object or request a curative jury instruction to the prosecution's statement that attempted robbery did not exist, that issue is unpreserved. *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010). Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting substantial rights. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). In regard to defendant's remaining preserved claims, our review is *de novo*, and we look at whether defendant was denied a fair and impartial trial. *People v Thomas*, 260 Mich App 450, 453; 678 NW2d 631 (2004).

B. ANALYSIS

Generally, prosecutors are given wide latitude in their statements and conduct and are free to argue the evidence and all reasonable inferences drawn therefrom. *People v Unger*, 278 Mich App 210, 236; 749 NW2d 272 (2008). We review a prosecutor's remarks in context and

evaluate them "in light of defense arguments and the relationship they bear to the evidence admitted at trial to determine whether a defendant was denied a fair and impartial trial." *People v Brown*, 267 Mich App 141, 152; 703 NW2d 230 (2005).

"A prosecutor may not vouch for the credibility of his witnesses by suggesting that he has some special knowledge of the witnesses' truthfulness." *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009). However, the prosecution is permitted to "argue from the facts that a witness is credible or that the defendant or another witness is not worthy of belief." *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). "It is not error to comment on the failure of the defense to produce evidence on a phase of the defense upon which the defendant seeks to rely." *People v McGhee*, 268 Mich App 600, 634; 709 NW2d 595 (2005) (quotation marks and citation omitted). Moreover, the prosecutor's misstatement of the law can be cured if the jury is correctly instructed on the relevant law. *People v Grayer*, 252 Mich App 349, 357; 651 NW2d 818 (2002).

The defendant alleges three instances of prosecutorial misconduct. First, he contends the prosecutor misstated the law when saying:

> In Michigan what this is telling you is there is no such thing as attempted armed robbery. If you try to rob somebody, you robbed them as far as the law is concerned. Now that's not for anybody to say that's right or that's wrong. That's not your job. Your job is just to figure out what the facts include, okay. That's the academic side.

Recently, our Supreme Court held that "attempted robbery or attempted armed robbery with an incomplete larceny is now sufficient to sustain a conviction under the robbery or armed robbery statutes, respectively." *People v Williams*, 491 Mich 164, 172; 814 NW2d 270 (2012). The core of the prosecutor's statement was that defendant's attempt to steal from the victims was sufficient for an armed robbery conviction, consistent with *Williams, supra*. Further, any confusion was cleared up when the jury was properly instructed regarding the elements of armed robbery. Thus, any error was cured, and we find no basis for reversal. *Grayer*, 252 Mich App at 357.

Second, defendant argues that the prosecution improperly vouched for the credibility of a witness when stating:

> [Defense counsel] also told you that there's no way that you can rely on the identification of the photo lineup; that this has to be just a mistake. Well, first off, ladies and gentlemen, this is a very good photo lineup if you look at it. These individuals all look to be very similar. You're never going to find two twins in a photo lineup. That's not going to happen. But here's how you know you can rely on this. Here's how you know this is true, okay. Ready? Mr. Andrews testifies that he did another lineup, not this lineup. He did a lineup for Jonathan Colvin. He got that one right.

The trial court overruled defense counsel's objection and the prosecution argued that Andrews's identification was reliable because he had correctly selected Colvin out of a different lineup.

The prosecution's statements were not improper vouching, and were based on the evidence submitted trial. Rather than improper vouching, the prosecution merely argued credibility and reasonable inferences. *Seals*, 285 Mich App at 22. Further, the prosecution's statement was based on the evidence at trial. Andrews testified that four men robbed him. He identified defendant and another gunman in a photograph lineup. Colvin later testified that he handled the gun during the robbery of Andrews. Thus, a reasonable inference from this testimony was that Andrews identified Colvin. As stated *supra*, the prosecution is free to argue reasonable inferences arising from the facts of the case. *Unger*, 278 Mich App at 236. Moreover, the prosecutor's statement was in response to defense counsel's arguments. "An otherwise improper remark may not rise to an error requiring reversal when the prosecutor is responding to the defense counsel's argument." *People v Watson*, 245 Mich App 572, 593; 629 NW2d 411 (2001) (quotation marks, brackets, and citation omitted). Defendant has failed to demonstrate that he was denied a fair and impartial trial.

Finally, defendant argues that the prosecution improperly shifted the burden of proof and vouched for witness credibility when stating:

> [Defense counsel] is telling you that the statement that was given to the police officers was false. Where is that evidence? No officer took the stand and said, yeah, it was a false confession. Nobody got up on that stand and said that. There is no evidence to suggest that it was false. What are you to believe, that a retired lieutenant police officer of 29 years completely made up this story?

Contrary to defendant's assertion on appeal, the prosecution did not improperly shift the burden of proof. The prosecution merely pointed out that defendant's assertion—that his confession was false—was not supported by the evidence. This was not in error, as the prosecution is permitted to comment on the failure of the defense to produce evidence upon which the defendant seeks to rely. *McGhee*, 268 Mich App at 634. The trial court also instructed the jury that the burden of proof rested with the prosecution, and that the jury was to determine the credibility of witnesses. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003).

Further, the prosecutor's comments were in response to defense counsel's arguments. *Watson*, 245 Mich App at 593. Nor did the prosecutor improperly vouch for the police officer's credibility. The prosecution merely asserted that the police officer was credible because he was a seasoned police officer, without implicating any type of special knowledge. *Seals*, 285 Mich App at 22. Accordingly, we find no error warranting reversal.[1]

III. SUFFICIENCY OF THE EVIDENCE

[1] Because defendant has not established any errors, there is no cumulative effect that warrants reversal. *People v Brown*, 279 Mich App 116, 146; 755 NW2d 664 (2008) ("Absent the establishment of errors, there can be no cumulative effect of errors meriting reversal.").

A. STANDARD OF REVIEW

Defendant next argues that there was insufficient evidence to support his armed robbery conviction for Mirvat Hammoud. We review "de novo a challenge on appeal to the sufficiency of the evidence." *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). "In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor" to ascertain "whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (quotations marks and citations omitted). "All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury's determinations regarding the weight of the evidence and the credibility of the witnesses." *Unger*, 278 Mich App at 222. We also recognize that "[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

B. ANALYSIS

Defendant argues that because he did not complete a larceny against Hammoud, he cannot be found guilty of armed robbery. However, the elements of armed robbery are:

> [U]sing force or violence against any person who is present at a larceny or assaulting or putting the person in fear, in the course of committing a larceny. To commit an armed robbery, the defendant must also either (1) possess a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or (2) represent orally or otherwise that he or she is in possession of a dangerous weapon. [*People v Hardy*, 494 Mich 430, 446; 835 NW2d 340 (2013) (quotation marks and brackets omitted).]

A conviction of armed robbery may be based on an attempt to commit a larceny, rather than the completion of such. *Williams*, 491 Mich at 172-175. Thus, contrary to defendant's argument, the completion of a larceny is not a prerequisite to his conviction. *Id*. Accordingly, defendant's argument is meritless.

Moreover, there was sufficient evidence of defendant's guilt. Defendant and his acquaintances met for the sole purpose of committing a robbery. To that end, defendant and Colvin approached the victims while they were sitting on Hammoud's porch. Defendant and Colvin then pulled out their guns and pointed the weapons at the women. Defendant approached Hammoud, grabbed her by the head, and dragged her across the porch. However, Hammoud was loudly screaming, and neighbors began to inquire about the commotion. Thus, defendant and Colvin fled the scene after taking Bazzi's cellular phone.

Based on this evidence, the jury could reasonably conclude that defendant attempted a larceny from Hammoud but ran away after her loud protests alerted the neighborhood. See *Allen*, 201 Mich App at 100 ("[c]ircumstantial evidence and reasonable inferences arising from

that evidence can constitute satisfactory proof of the elements of a crime."). Accordingly, we find no merit to defendant's arguments.

IV. CONCLUSION

There were no instances of prosecutorial misconduct warranting reversal. Nor was there insufficient evidence to support defendant's armed robbery conviction for Mirvat Hammoud. We affirm.

/s/ Michael J. Riordan
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot